Department of Toxic Substances Control

Maureen F. Gorsen, Director
700 Heinz Avenue
Berkeley, California 94710-2721

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

RESPONSE TO COMMENTS

Standardized Hazardous Waste Facility Permit

Bakersfield Transfer, Inc.
1620 East Brundage Lane
Bakersfield, California 93307
Kern County
EPA ID No. CAL 000 282 598

March 7, 2008

Bakersfield Transfer Inc. (BTI) applied for a Series B Standardized Permit from the Department of Toxic Substances Control (DTSC) in 2006. The Standardized Permit would allow BTI to store used oil, waste antifreeze, and oily water in one of four appropriate 20,000 gallon storage tanks. The Standardized Permit would also allow BTI to store oil-contaminated wastes in containers and to consolidate the solid waste contaminated with used oil into roll-off bins. Additionally, truck-to-truck transfer and truck washout would be allowed. The consolidated used oil and solid waste are sent to the authorized used oil recycling or disposal facility.

DTSC prepared a Draft Permit and a Draft Negative Declaration in compliance with the California Environmental Quality Act (CEQA) for this project. DTSC publicized the start of a 45-day public comment period for both the Draft Permit and the Proposed Negative Declaration by placing a public notice in the English and Spanish local newspaper, mailed English and Spanish fact sheets to the surrounding residents, and announced the beginning public comment on the local radio station. The public comment period started on December 3, 2007. A public meeting and hearing was held at the Kern County Library on January 8, 2008. The public comment period ended on January 16, 2008. DTSC received two e-mails and three letters during the public comment period:

E-mail #1: Mr. Ben McNeill, Bakersfield Transfer, Inc., President

E-mail #2: Mr. Ben McNeill, Bakersfield Transfer, Inc., President

Letter #1: Mr. Kevin Boles, Environmental Specialist, Public Utilities Commission

Letter #2: Mr. Michael Freund, Attorney, Center for Environmental Health

Letter #3: Ms. Jodi Smith, Attorney, Paul, Hastings, Janofsky & Walker, LLP, on behalf of Demenno/Kerdoon

DTSC prepared this Response to Comments document. Each comment is followed by DTSC's response to the comment. The person who made the comments was identified and his/her name was listed before the comments (shown below in ***italics)***.

Commenter #1: Mr. Ben McNeill, Bakersfield Transfer, Inc. President (Emails dated January 6, 2008 and January 15, 2008)

Comment #1-1

"Thanks for getting with me. I sent you a new CD copy of BTI's permit yesterday. Let me know if it is ok. I also wanted to comment about Unit #5 in the Draft Standardized Part B Permit. On page 12 of draft permit, can you change the maximum capacity from 12,000 gallons to 14,000 gallons. This will be consistent with the engineering and current fact sheet on page 2 of the permit package. Thanks for your help."

Response:

The Department of Toxic Substances Control (DTSC) has made the correction in the Draft Permit. The Draft Permit now reads 14,000 gallons for maximum capacity for Unit #5 on page 12.

Comment #1-2

"I wanted to respond to Unit # 5 in Bakersfield Transfer's draft permit. Can you change the containment volume in Unit # 5 from 1200 cubic feet to read 1400 cubic feet? This will be consistent with the engineering and required containment for vessels. Thank you."

Response:

The DTSC has made the correction. The containment volume for Unit #5 in the Draft Permit now reads 1400 cubic feet.

Commenter #2: Mr. Kevin Boles, Environmental Specialist, Public Utilities Commission (Letter dated January 10, 2008)

Comment #2-1

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at-grade highway-rail crossings.

Response:

DTSC conducted an Initial Study for the project which included evaluating the possible impact the proposed facility might have on traffic and transportation in

the area. Bakersfield Transfer Inc. (BTI) is proposing to construct and operate a used oil storage and transfer facility. The maximum number of trucks coming and going from the facility is estimated to be five per day when the facility is operating at maximum capacity. The trucks enter the facility from a driveway on East Brundage Lane which has an LOS rating of A. There are no plans to add a driveway which would impact any at-grade highway-rail crossing in the area. Therefore, DTSC has concluded that the proposed facility will not have a significant impact on the traffic and transportation in the area**.**

Please look at the Response to Comment #2-2 for additional information.

Comment #2-2

Of specific concern is the impact of trucks carrying hazardous materials using the existing driveway adjacent to the at-grade highway-rail crossing on Martin Luther King Boulevard. Driveways in such close proximity to at-grade crossings present safety hazards due to potential vehicles queuing on the tracks due to turning movements, and driver distraction while concentrating on vehicular traffic. We recommend that all vehicles use the alternate access on East Brundage Lane.

The above-mentioned safety improvements should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the city.

If you have any questions in this matter, please call me at (415) 703-2795.

Response:

The proposed facility has no existing driveways adjacent to railway crossing on Martin Luther King Boulevard, nor does the facility plan to construct any driveway near the railroad crossing on Martin Luther King Boulevard. All vehicles enter the facility from a driveway on East Brundage Lane. Any proposed modification to the facility which may affect traffic pattern in nearby areas will be done with the consultation of the City of Bakersfield Planning Department.

Commenter #3: Mr. Michael Freund, Attorney, Center for Environmental Health (Letter dated January 15, 2008)

Comment #3-1

I. DTSC Must Require a Hazardous Waste Facility to Show Compliance with Local Land Use Law Prior to the Agency Granting a Permit

CEH is very concerned that DTSC is approving permits without ensuring that the hazardous waste facility is first in compliance with local land use law. CEH was able to learn toward the end of the American Oil Company case that the facility did not have a proper land use permit to operate. CEH provided information to Alfred Wong, DTSC Project Manager on August 23, 2007 from the City of Los Angeles that the company was subject to an Order to Comply as the facility merely had a machine shop permit rather than a permit to operate a hazardous waste facility. The City also provided a letter that the company was subject to a Conditional Use Permit requirement which the company did not have. This information should have been disclosed at the beginning of the permit process by American Oil Company.

Similar to the American Oil company case, DTSC should require BTI to demonstrate compliance with local land use law prior to DTSC permit approval. CEH has concerns that BTI.will not comply with land use requirements established by Kern County to operate its facility in a lawful manner. In particular, DTSC must recognize that BTI is applying for a Permit from DTSC while it is in ***violation*** *of the Kern County Zoning ordinance. Specifically, the company seeks to operate the facility in a M-2 zone where it is not legally allowed to operate.*

The Kern County Zoning ordinance at Section 19.38 lists numerous allowable uses in a M-2 zone, all of which involve non-hazardous activities. Section 19.02.060 states that "Any use not specifically permitted by the provisions of this title is prohibited." Based on these provisions, the BTI facility would not be allowed to operate by Kern County in a M-2 zone even if a conditional use permit ("CUP") is obtained. Please refer to Kern County Ordinances at http://ordlink.com/codes/kerncoun/.

I have spoken with staff at the Kern County Planning Department as to whether a hazardous waste facility would be allowed to operate in an M-2 zone. On January 7, 2008 I spoke with Supervising Planner Kathe Malouf at (661) 862-8948. Ms. Malouf informed me that a hazardous waste facility would not be appropriate in a M-2 zone even with a CUP.

BTI cannot legally operate in an M-2 zone in Kern County even with a CUP. DTSC should require as a condition precedent to granting its Permit, that BTI establish that it is in full compliance with the Kern County Zoning ordinance. As a matter of policy, DTSC should take a hard look at whether it should conduct review of a project without first being assured that a facility is in full compliance with local land use. In this case, until BTI can first demonstrate that it can lawfully operate in an M-2 zone, DTSC should not approve the Permit.

Response:

The proposed BTI facility will be located within in the City of Bakersfield and as such, is under the jurisdiction of the City of Bakersfield Planning Department, not the County of Kern Planning Department. Therefore, the Kern County Zoning ordinances cited by Mr. Freund are not applicable.

Additionally, the City of Bakersfield Planning Department approved the construction plans in letters dated June 9, 2005 and May 10, 2006, signed by Jim Eggert, Principal Planner. BTI also received a Permit to Operate for Hazardous Materials/ Hazardous Waste from the Certified Unified Program Agency.

Comment #3-2

II. BTI Must be Required to Revise the Closure Cost Estimate to Include the Maximum Inventory of Hazardous Wastes That May be Stored at the Facility

CEH has identified a serious deficiency in the draft Closure Cost Estimate for BTI which must be corrected before any final permit can be issued by DTSC. BTI's Closure Cost Estimate grossly underestimates the amount of hazardous waste that will remain on-site at time of closure. Pursuant to 22 CCR § 66264.112(b)(3), the Closure Plan must include "an estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used.....for removing, transporting, treating, storing or disposing of all hazardous wastes." Further, in section 9.9 (Closure Plan) of DTSC's "Permit Writers Instructions for Storage and Treatment Facilities," it states that "the closure plan must describe the steps necessary to close the facility at any given time, in the event that the facility is unexpectedly required to begin closure. Therefore, the plan must describe, and be based on the "maximum extent of operations" and "maximum inventory of hazardous waste."" The "maximum extent of operations" will typically be equivalent to the maximum proposed or planned design capacity of units at the facility." The Closure Cost Estimate must be based on the information and activities described in the Closure Plan, as required by 22 CCR § 66264.142(a)

BTI's draft Permit states that they will have 80,000 gallons of tank storage capacity for liquid hazardous wastes, over 82,000 gallons of drum and roll-off bin storage capacity for liquid hazardous wastes and hundreds of cubic yards of storage capacity for solid hazardous wastes. The draft Closure Plan on Page 2 states "[t]he following is the maximum quantity of waste (by waste type) that can be stored at any time. See Table 24A for tank details." Table 24A lists the same quantities of hazardous waste storage which are listed in the draft Permit. However, the draft Closure Cost Estimate only calculates closure costs for removing 3,792 gallons of liquid hazardous waste in tanks, 19,182 gallons of hazardous waste in drums, as well as lesser amounts for solid hazardous waste

storage than the maximum capacities described in the draft Permit. The Closure Cost Estimate is therefore not based on the maximum extent of operations or the maximum inventory of hazardous wastes as required. The Closure Cost estimate must be based on the maximum inventory of hazardous wastes in the event that BTI abandons the facility with all tanks and other storage areas at maximum capacity and DTSC is required to implement the closure plan. BTI must therefore revise the Closure Cost Estimate to include the maximum inventory of hazardous wastes that may be stored at the facility and increase the estimated closure costs to reflect the removal of the maximum inventory of hazardous waste.

Response:

The Closure Cost Estimate prepared for the BTI facility is based upon cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as required by California Code of Regulations, title 22, section 66264.142. Maximum inventory was assumed in the preparation of the Closure Cost Estimate. Table 24A of the permit application and the draft Permit show the following maximum inventory to be stored at the facility:

The cost for the removal of the hazardous waste is shown in Table 29 of the permit application. Removal of the inventory from the tank farm (80,000 gallons) can be found on page two of Table 29 in the Treatment & Disposal of Decontamination Fluid section. In this section, the capacity of 80,000 gallons of used oil, waste antifreeze, and oily water in the tank farm is converted to tonnage and is shown as 333.8 tons of used oil, 83.4 tons of antifreeze, and 83.4 tons of oily water, respectively. Associated disposal cost is also shown in Table 29.

There are three areas at the facility that is authorized to store solid hazardous waste: Unit 2 - Drum Storage Area, Unit 3 - Roll-off Bin Storage Area and Unit 4 - Drum Loading/Unloading Area. Unit 2 can store 80 cubic yards of solid hazardous waste in four 20-cubic yard roll-off bins, Unit 3 can store 240 cubic yards of solid waste in 12 20-cubic yard roll-off bins, and Unit 4 can store 80 cubic yards in four 20-cubic yards roll-off Bins. The total roll-off bin capacity of 400 cubic yards was converted to 400 tons. This is shown on page 1 in Table 29 under the section Treatment and Disposal: Roll off Bins.

There are three areas at the facility that is authorized to store waste in drums: Unit 2 - Drum Storage Area can store up to 1200 drums, Unit 4 - Drum Loading/Unloading Area can store 300 drums, and Unit 5 - Tanker Loading/Unloading Area can store up to 14,000 gallons in two tanker trucks. Tanker trucks are considered to be drums for closure cost estimate purposes. The total drum storage capacity was converted to tons. Therefore, Unit 2 can store up to 1200 tons, Unit 4 can store up to 300 tons and Unit 5 can store up to

58.4 tons. These numbers are listed under the Treatment & Disposal section on page one in Table 29.

Comment #3-3

III. BTI's Permit Application Must be Revised to Include Documentation to Demonstrate that BTI Will be Able to Provide the Requisite Liability Coverage Upon Commencement of Operations and for Closure of the Facility

BTI's permit application contains no documentation regarding providing financial assurance for either liability or closure. Pursuant to 22 CCR § 66264.147(a), a hazardous waste transfer and storage facility must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. 22 CCR § 66270.14(a)(17) states that "[f]or a new facility, documentation showing the amount of insurance meeting the specification of section 66264.147(a) and, if applicable, section 66264.147(b), that the owner or operator plans to have in effect before the initial receipt of hazardous waste for transfer, treatment, storage or disposal." However, BTI's permit application contains no documentation indicating that BTI has sought liability coverage for the facility. BTI's permit application must therefore be revised to include documentation to show that BTI will be able to provide the required liability coverage when the facility begins to operate.

Furthermore, pursuant to 22 CCR § 66264.143, hazardous waste storage and transfer facilities are required to "establish and demonstrate to the Department financial assurance for closure of the facility." Facilities may choose from a variety of financial assurance mechanisms for providing financial assurance for closure. BTI's permit application does not contain any documentation which indicates how BTI plans to provide financial assurance for closure. CEH is interested in reviewing the details of the financial assurance mechanism which BTI plans to use for providing financial assurance for closure. CEH therefore requests that DTSC obtain this financial assurance documentation from BTI and include it as part of the administrative record for this permit decision and for the public's review.

Response:

In accordance with California Code of Regulations, title 22, section 66264.147(a)(1)(E), all new hazardous waste facilities are required to submit a liability endorsement or certificate of insurance to DTSC at least 60 days before the date on which hazardous waste is first received for transfer, treatment, storage or disposal. DTSC will review the documents and ensure that insurance is effective before this initial receipt of hazardous waste at the facility.

Commenter #4: Ms. Jodi Smith, Attorney, Paul, Hastings, Janofsky & Walker LLP (Letter dated January 11, 2008), on behalf of Demenno/Kerdoon (D/K)

Comment #4-1

The following comments on the Draft Standardized Hazardous Waste Facility Permit ("Permit") for the Bakersfield Transfer, Inc. ("BTI") are being submitted on behalf of Demenno/Kerdoon ("D/K"), who operates a used oil recycling facility in Compton, California. Specifically, D/K is providing comments concerning the requirement in Part V., Section H.2. of the Permit, which states:

> *"All outgoing used oil shall be tested for PCBs to ensure that the used oil load does not contain PCBs at a concentration of 2 ppm or greater. The Permittee shall test the used oil from each storage tank for PCBs pursuant to the procedures specified in Condition H.2.a below or the Permittee shall comply with the requirements in Condition H.2.b, which provide for the receiving facility to test the used oil for PCBs."*

D/K believes that the requirement for PCB testing on each outgoing load of used oil from the BTl facility, without regard for the destination of the used oil, is an underground regulation, as evidenced by the inclusion of this standard in every used oil transfer facility permit issued by DTSC. As noted in previous comments submitted on this issue, this standard is not only unnecessary, it will have an adverse affect on consumers, the California used oil industry and the environment.

In order to avoid compliance or gain an unfair competitive advantage, used oil transporters will drive their loads of used oil to a neighboring state where the PCB threshold is 50 ppm. In the event that BTI elects to have an in-state receiving facility test the incoming loads of used oil from BTI for PCBs, the testing protocols which DTSC is requiring for the receiving facility will only cause trucks to sit idle at receiving facilities awaiting analytical results. This will increase truck traffic in the vicinity of receiving facilities and cause unnecessary and harmful quantities of diesel idling emissions. Clearly, a statewide standard requiring such PCB testing by transfer facilities is an illegal underground regulation which has not been properly adopted pursuant to the procedures of the Administrative Procedures Act ("APA").

Response:

DTSC has the statutory authority and mandate to impose permit conditions on a case-by-case basis to ensure that the operation of a used oil transfer facility provides adequate protection of the environment and public health. There are currently two other used oil facilities that have similar PCB testing requirements

in their permits. There is no evidence that transporters avoid these facilities due to the PCB testing requirements, nor is there any evidence that these facilities intend to leave California due to PCB testing requirements. There is also no evidence that California consumers would be impacted by higher costs for, or reduced availability of, used oil.

With regard to the comment about "idling" trucks, the time spent in waiting for PCB determination is warranted to prevent a PCB-contaminated load from further cross-contaminating other loads or equipment.

Comment #4-2

D/K has previously provided these and more detailed comments on the PCB testing requirements in the context of the permit decision for the American Oil Company. D/K hereby incorporates these previous comments by reference and attaches them to this letter for your convenience.

Response:

D/K's previous comments on the PCB testing requirements in the context of the permit decision for the American Oil Company and DTSC's response to those comments are shown in Attachments 1 and 2 of this Response to Comments.

Comment #4-3

D/K believes that the current requirements at in-state used oil recycling facilities for testing each tank receiving used oil for PCBs are effective and sufficient to identify PCB-containing used oil and ensure that PCB-contaminated used oil does not enter commerce or the environment. D/K proposes that DTSC limit the mandatory PCB-testing requirements to loads of used oil which will be sent out-of-state for recycling. D/K believes that this would balance DTSC's desire to reduce PCB contamination in used oil without causing a negative impact on the used oil transportation industry and the environment.

D/K appreciates your consideration of these comments and requests that DTSC suspend this requirement and refrain from applying this standard at BTI or any other facilities unless it is adopted pursuant to the APA. If you have any questions or require additional information, please do not hesitate to contact me.

Response:

Used oil transfer facilities, such as BTI, are eligible to apply for a Standardized Permit with DTSC since used oil is not regulated as a RCRA hazardous waste under federal law. The California Health and Safety Code section 25250.1 excludes as "used oil" any oil containing more than 5 ppm of PCBs. Any used oil

facility intending to receive used oil with more than 5 ppm of PCBs would not qualify for a Standardized Permit. Therefore, these permit conditions are imposed on used oil transfer facilities such as BTI to ensure that incoming shipments of used oil do not contain more than 5 ppm of PCBs. DTSC recognizes that it would be difficult to have each incoming load of used oil tested for PCBs to ensure it does not contain greater than 5 ppm of PCBs. Instead, DTSC allows used oil facilities to test each outgoing load for PCBs at 2 ppm to account for the dilution factor.

The permit conditions are necessary to ensure that the used oil in the outgoing tanker trailer does not contain PCBs at a concentration of 2 ppm or greater. If the test result in the outgoing tanker trailer confirms that the used oil contains PCBs at a concentration of 2 ppm or greater, it would be necessary to test the representative sample taken from each tanker truck before it is unloaded into the tanker trailer to determine whether the used oil in any of the tanker trucks contains PCBs at a concentration at or above 5 ppm; and if it does, the entire tanker trailer would have to be shipped to a facility that is authorized to accept PCB-contaminated hazardous waste. These conditions are necessary to ensure that BTI is receiving the types of hazardous waste that it is authorized to receive, regardless of the final destination of the used oil.

These permit conditions are practical because testing of each incoming tanker truck is only required after the test result in the outgoing tanker trailer confirms that the used oil contains PCBs at a concentration of 2 ppm or greater.

These permit conditions also provide flexibility in that it allows BTI either to test the outgoing oil for PCBs or to instruct the receiving facility to test the tanker truck containing used oil load from BTI for PCBs. The used oil recycling facility must provide BTI with documentation that the load has been tested and does not contain greater than 2 ppm of PCBs. Used oil recycling facilities such as Industrial Services and Evergreen Oil are already testing used oil in each incoming truck before it is unloaded into the tanks.

ATTACHMENT 1 – D/K COMMENTS ON PCB TESTING REQUIIREMENT ON AMERICAN OIL COMPANY DRAFT PERMIT AND DTSC'S RESPONSE TO COMMENTS (EXCERPTED FROM AMERICAN OIL COMPANY - RESPONSE TO COMMENTS, DECEMBER 8, 2006)

Commenter #4: Jodi Smith of Paul, Hastings, Janofsky, & Walker LLP on behalf of DeMenno/Kerdoon (Letter dated May 22, 2006)

Comment #4-1

The following comments on the Draft Standardized Hazardous Waste Facility Permit ("Permit") for the American Oil Company ("American Oil") are being submitted on behalf of DeMenno/Kerdoon ("D/K"). D/K wishes to provide the following comments on this Permit in the context of DTSC's recent aborted effort to call in permit modifications for PCB testing at all in-state used oil transfer facilities. D/K believes that the requirement for PCB testing on each truck-to-truck transfer, without regard for the destination of the waste, would set a precedent for other transfer facilities. Implementation of this proposal at all in-state transfer facilities would adversely affect the California used oil industry and California consumers. D/K proposes that DTSC instead limit the mandatory PCB testing to all tankers of used oil that will be sent out of state. If the oil will be processed in-state at a permitted treatment and recycling facility, the oil should be tested at the in-state facility consistent with that facility's WAP. D/K also proposes that DTSC enhance compliance with Health and Safety Code Section 25250.09.

At D/K's Compton facility, each tank receiving used oil must be tested to determine whether the used oil contains less than 2 ppm PCBs. If a tank contains PCBs at a concentration of 2 ppm or greater, D/K must trace the source of the PCBs back to the individual shipment by testing samples that are collected from each of the incoming trucks prior to transferring their loads into a tank. If any of the individual loads contains PCBs at a concentration of 5 ppm or greater, D/K must dispose of the entire tank as PCB-containing hazardous waste.

In its recent call-in letters to used oil transfer facilities, DTSC sought to impose PCB testing requirements on storage tanks prior to shipment to recycling facilities that are similar to the PCB testing on truck-to-truck transfers that it now proposes at American Oil. The conditions requiring PCB testing for each truck-to-truck transfer in this Permit are of grave concern to D/K because requiring such testing for used oil that is destined for in-state recycling is unnecessary, highly impractical and would pose tremendous delays in routine used oil transportation.

Response:

Used oil transfer facilities, such as AOC, are eligible to apply for a Standardized Permit with DTSC since used oil is not regulated as a RCRA hazardous waste under federal law. The California Health and Safety Code section 25250.1 excludes as "used oil" any oil containing more than 5 ppm of PCBs. Any used oil facility intending to receive used oil with more than 5 ppm of PCBs would not qualify for a Standardized Permit. Therefore, used oil transfer facilities must ensure that incoming shipments of used oil do not contain more than 5 ppm of PCBs. DTSC recognizes that it would be difficult to have each incoming load of used oil tested for PCBs to ensure it does not contain greater than 5 ppm of PCBs. Instead, DTSC allows used oil facilities to test each outgoing load for PCBs at 2 ppm to account for the dilution factor.

These permit conditions are necessary to ensure that the used oil in the outgoing tanker trailer does not contain PCBs at a concentration of 2 ppm or greater. If the test result in the outgoing tanker trailer confirms that the used oil contains PCBs at a concentration of 2 ppm or greater, it would be necessary to test the representative sample taken from each tanker truck before it was unloaded into the tanker trailer to determine whether the used oil in any of the tanker trucks contained PCBs at a concentration at or above 5 ppm; and if it does, the entire tanker trailer would have to be shipped to a facility that is authorized to accept PCB-contaminated hazardous waste. These conditions are necessary to ensure that AOC is receiving the types of hazardous waste that it is authorized to receive, regardless of the final destination of the used oil.

These permit conditions are practical because testing of each incoming tanker truck is only required after the test result in the outgoing tanker trailer confirms that the used oil contains PCBs at a concentration of 2 ppm or greater.

These permit conditions also provide flexibility in that it allows AOC either to test the outgoing oil for PCBs or to instruct the receiving facility to test the tanker truck containing used oil load from AOC for PCBs. The used oil recycling facility must provide AOC with documentation that the load has been tested and does not contain greater than 2 ppm of PCBs. Used oil recycling facilities such as Industrial Services and Evergreen Oil are already testing used oil in each in-coming truck before it is unloaded into the tanks.

Comment #4-2

D/K understands that the proposed testing requirement is appropriate for oil that is being transported out-of-state because the standards for used oil ate so much less stringent outside of California. However, imposing blanket PCB testing requirements on each transfer facility will discourage rather than encourage compliance with PCB testing requirements. Once a transporter drives to another

state, the transporter is only required to meet the federal 50 ppb standard under TSCA. Deleting the option of sending the used oil to an in-state facility without testing will encourage transporters to flaunt the California regulations and ship waste out of state. As oil prices continue to increase with no end in sight, there is even more incentive for transporters to take oil out of state. Used oil can be used in a variety ways under the federal regulations. Used oil can be reconditioned by removing impurities, introduced into a refining process as a feedstock to produce gasoline and coke, or processed and burned for energy recovery. Thus, oil that does not meet California standards for used oil and must be managed as a hazardous waste in California may be a valuable commodity in states with less stringent environmental regulations. If DTSC requires testing on each tank or truck load that is transferred to another truck, transporters will be more likely to simply make the Section 25250.9 certifications and then haul the used oil to another state for recycling.

Under the proposed requirements included in American Oil's draft permit, if a truck is destined for in-state recycling, that truck would be required to sit idle at the transfer station until a sample of the used oil can be collected and tested. The practical reality is that in many cases, there will be a lapse of two to three days between the time a truck reaches a transfer station and the time the test results of the truck's contents are received. Any number of scheduling issues plays into this, including the timing of a truck's arrival and the analytical schedule and capacity of the contracted laboratory. In the meanwhile, the truck must remain idle and still loaded at the transfer facility until the testing is completed. Rather than wait up to several days for a load to be tested, the temptation will be to drive smaller trucks directly to a neighboring state to unload the oil. If this precedent is applied to tanks at transfer facilities, then bulking will not occur and individual trucks will be similarly incentirized to drive directly out-of-state. The end result of sending used oil with a high PCB content to other states is that an increasing proportion of used oil generated in California will be managed at out-of-state facilities with reduced environmental protections.

In addition, as more transporters take used oil out of the state without testing it for PCBs, there will be a huge negative economic impact on the transporters and recyclers who manage used oil in California. Inevitably, used oil meeting the recycled oil criteria will be trucked out of state by transporters unwilling to keep their trucks idle for several days while they wait for test results. As a result, California consumers will be impacted by higher costs for and reduced availability of recycled oil.

Response:

DTSC is committed to enhanced enforcement of Health and Safety Code section 25250.9, but compliance of this section alone does not ensure that the incoming and outgoing loads of used oil meet the statutory limits for PCBs. The State

Legislature, in enacting Health and Safety Code section 25250 et seq., recognizes that in spite of the potential for used oil recycling, significant quantities of used oil are improperly used by means that pollute the water, land and air, and endanger the public health and safety. DTSC has the statutory authority and mandate to impose permit conditions on a case-by-case basis to ensure that the operation of a used oil transfer facility provides adequate protection of the environment and public health. There are currently two other used oil facilities that have similar PCB testing requirements in their permits. There is no evidence that transporters avoid these facilities due to the PCB testing requirements, nor is there any evidence that these facilities intend to leave California due to PCB testing requirements. There is also no evidence that California consumers would be impacted by higher costs for, or reduced availability of, used oil.

The commentor is mistaken that DTSC is requiring each incoming truck load of used oil to be tested for PCBs. The AOC permit only requires that each outgoing consolidated load of used oil be tested for PCBs. These permit conditions will have minimal impact on transporters bringing used oil to the AOC facility since incoming loads are not tested for PCBs. A sample from each truck load is retained and analyzed only if PCBs are later detected by the receiving facility. This is common practice for used oil transfer facilities. Additionally, these permit conditions should not impact transporters hauling used oil from the AOC facility since these transporters are either employed by AOC or contracted by AOC to provide transportation service.

With regard to the comment about “idling” trucks, the time spent in waiting for PCB determination is warranted to prevent a PCB-contaminated load from further cross-contaminating other loads or equipment. In stead of relying on the receiving facilities to test for PCBs, used oil transfer facilities can establish onsite laboratory testing procedures for PCBs, or contract with certified laboratories for PCB testing. At the AOC facility, there would not be any “idling” trucks because AOC plans to have the receiving facilities test for PCBs.

Comment #4-3

Health and Safety Code Section 25250.9 was adopted to ensure used oil generators are informed that their used oil may be sent to an out-of-state facility that does not meet stringent hazardous waste management standards when choosing whether to process used oil at a California facility or to send the used oil to another state. This statute evinces the Legislature's desire to keep used oil in-state and managed as hazardous waste. California standards include secondary containment, waste composition analysis and financial assurances. This legislative policy has helped prevent used oil from being dumped and it has successfully promoted used oil recycling. Enhanced enforcement of Section 25250.9 would ensure that all used oil is properly tested at California treatment

and recycling facilities, making it unnecessary to test used oil at transfer facilities unless that oil will be transported to another state.

Additionally, D/K takes issue with the alternative testing condition set out in the permit. Specifically, it is impractical and unnecessary to require receiving facilities to test American Oil's used oil for PCBs as stated in Section V.I.2.b. Permitted California treatment and recycling facilities are required to test the used oil in accordance with their WAPs. D/K is opposes the imposition of different testing requirements on California treatment and recycling facilities as proposed in American Oil's Permit. This is inconsistent with the facilities existing permits and will result in the receiving facility being required to comply with two overlapping sets of PCB testing requirements. As noted above, the draft permit should acknowledge the existing in-state management scheme and allow waste to be tested at permitted in-state facilities pursuant to the facility WAP. It may make sense to require out-of-state facilities to test individual trucks because the oil could legally be commingled with high PCB oil. However, it may make more sense to simply require trucks bound for out-of-state facilities to be tested on a truck by truck basis. This is especially true given California's lack of jurisdiction over out-of-state facilities.

Response:

As pointed out in Response to Comment #4-2, DTSC is committed to enhanced enforcement of Health and Safety Code section 25250.9, but compliance of this section alone does not ensure that the incoming and outgoing loads of used oil meet the statutory limits for PCBs. The requirements in Section V.I.2.b of the permit serve two purposes. First, it provides an alternative to AOC if it chooses to have the receiving facility test the used oil for PCBs. Second, these procedural requirements are necessary to maintain consistency in the testing for PCBs conducting by the receiving facilities. A transfer facility, such as AOC, can ask a receiving facility to agree to these testing procedures which are in addition to the facility's waste analysis plan (WAP); it is part of the business arrangement and customer service that a receiving facility can agree to provide to a transfer facility. The purpose of a WAP is to impose the minimum testing requirements to ensure that the facility is receiving the types of hazardous waste the facility is authorized to receive. Unless a receiving facility's WAP prohibits the PCB-testing procedures required by this permit, there should not be any conflict or inconsistency between the WAP and the testing procedures required by this permit. The receiving facility may choose to apply for a permit modification to include the additional testing procedures for PCBs, but it would not be required to do so. DTSC has reviewed the WAPs for the facilities that are authorized to receive used oil in California and has not found any conflict or inconsistency.

Comment #4-4

As a practical matter, truck-to-truck transfers only occur when a transporter is taking used oil out of state. Consequently, requiring PCB testing on truck-to-truck transfers, such as DTSC proposed to require at the American Oil transfer facility, may not affect the in-state management of used oil. However, D/K is concerned that if DTSC does not acknowledge the in-state option of having used oil tested at the treatment and/or recycling facility, then it will set the precedent for applying these standards to transfer facilities. D/K is also very troubled by the proposal to change practices at existing in-state facilities. This is either ill-conceived or a back door attempt to change existing facility WAPs without associated permit modifications. In either event, it is bad policy. A better model for enforcement would be to expressly require PCB testing requirements only on used oil that is destined for transport to an out-of-state facility.

D/K greatly appreciates your consideration of these comments.

Response:

It is incorrect to state that truck-to-truck transfers only occur when a transporter is taking used oil out of state. AOC will conduct truck-to-truck transfers as it consolidates truck-loads of used oil before sending the consolidated load to a receiving facility. DTSC understands that AOC intends to send the consolidated loads to an in-state recycling facility. Other used oil transfer facilities such as the Evergreen Oil facility in Carson may occasionally conduct truck-to-truck transfers before sending the consolidated load to an in-state recycling facility.

DTSC does acknowledge the in-state option of having the used oil tested at the treatment and/or recycling facility. That is why DTSC allows for the flexibility of having the receiving facility conduct the PCB testing and provide AOC with documentation that the consolidated used oil load has been tested and confirms that it does not contain greater than 2 ppm of PCBs.

The conditions in Part V.I.2. of the permit are not intended to change practices at existing in-state facilities, nor are they a back door attempt to change existing facilities' WAPs without associated permit modifications. As discussed in previous responses, these conditions are imposed on a case-by-case basis to ensure that an used oil transfer facility such as AOC is receiving the types of hazardous waste that it is authorized to receive, regardless of the final destination of the used oil, and to ensure that AOC's used oil transfer operation provides adequate protection of the environment and public health. D/K may choose to follow the requirements in Part V.I.2.b of the permit as part of the business arrangement with AOC. D/K may choose to apply for a permit modification to include the additional testing procedures for PCBs, but it would

not be required to do so because DTSC does not believe these procedures conflict with the current WAP requirements.

ATTACHMENT 2 – D/K APPEAL ON PCB TESTING REQUIIREMENT ON AMERICAN OIL COMPANY FINAL PERMIT AND DTSC'S DECISION ON APPEAL (EXCERPTED FROM AMERICAN OIL COMPANY – FINAL DECISION ON APPEAL FROM FACILITY PERMIT DECISION, OCTOBER 19, 2007)

Appeal Comment 1:

DTSC's PCB testing requirements at used oil transfer facilities, specifically PCB testing on each truck-to-truck transfer, will have adverse unintended consequences for the used oil industry and the environment. (D/K Comment 1)

DTSC's Response:

DTSC denies the appeal on this comment for the reasons stated below. PCB testing is not carried out on all truck-to-truck transfers but is instead reserved only for the retained samples of shipments that were consolidated into a load that later exceeded 2 parts per million (ppm).

D/K argues that the testing requirements documented in a DTSC memorandum will have adverse negative consequences on the used oil industry and the environment. However, based on the information available to DTSC and as cited in a memorandum from Watson Gin, dated March 15, 2007 "(t)he PCB testing requirement along with other testing requirement at transfer facilities is the only way for a facility to know whether or not they are allowed to receive the shipment of used oil legally."

1). Negative Impacts on Transfer Facilities and Transporters in California

D/K argues that the testing requirements will have a serious effect on used oil transfer facilities in rural areas of California. However, because AOC is located in a urban area the comment is not applicable. Moreover, the information available to DTSC does not indicate that the PCB testing requirements will have a negative statewide impact. Based on the information available to DTSC, DTSC believes that the transportation pattern of used oil from rural areas to any instate receiving facilities will not be changed because of PCB testing requirements nor will they increase traffic congestion or the miles traveled.

2). Negative Impacts on Communities Near Used Oil Recycling Facilities.

D/K argues that the PCB testing requirements would increase the long term impacts that recycling facilities have on neighboring communities. The permit conditions in AOC's permit are intended to prevent the mixture of wastes, i.e used oil with other wastes that would render the used oil untreatable at the permitted facility. AOC has six registered trucks which will be used to transport

used oil. AOC has agreed to the conditions of the permit. DTSC believes that with the proper pre-acceptance arrangement and scheduling with receiving facilities the following should occur: 1) the idling emission or wait time will be significantly reduced; 2) the number of shipments of used oil rejected shipments at treatment facilities will be reduced because suspect shipments will be tested prior to transport; and 3) the inadvertent mixture of used oil with used oil containing PCBs will be reduced.

3). Out of State Transport and Negative Impacts on the Used Oil Market.

D/K argues that the testing requirement will discourage compliance and may encourage transporters to circumvent California standards and ship used oil out of state. The requirement to test used oil for PCB concentrations is not anticipated to impact out of state transport of used oil. Used oil containing detectable levels (2 ppm) of PCBs is subject to regulation pursuant to 40 Code of Federal Regulations section 761.20(e). Used oil containing 2 ppm, but less than 50 ppm of PCBs must be managed in accordance with 40 Code of Federal Regulations part 270 and can only be burned in a qualified incinerator as defined in 40 Code of Federal Regulations section 761.3. Used oil burners containing 2-49 ppm PCBs are subject to tracking and notice requirements in 40 Code of Federal Regulations 279, Subparts G & H and section 279.66 and 40 Code of Federal Regulations section 279.72(b). Used oil containing PCBs at 50 or above must be managed in accordance with 40 Code of Federal Regulations part 761. Because these are federal requirements, they must be met throughout the United States. The PCB testing requirements will ensure that used oil whether contaminated with PCBs or not will be shipped to an authorized facility.

4). Current PCB Testing Protocols and Reasonable Alternatives.

The permit conditions at AOC will not change how permitted hazardous waste facilities screen and trace the source of PCBs from shipments that exceed the allowable concentrations. The permit conditions at AOC are practical because testing of each tanker truck is only required after the test result in the outgoing tanker trailer confirms that the used oil contains PCBs at a concentration of 2 ppm or greater.

In addition, AOC agreed to the conditions of the permit. PCB testing before unloading a shipment at a recycling facility is necessary to reduce the inadvertent dilution that occurs when multiple shipments of used oil are mixed with another shipment that contains high concentrations of PCBs. Used oil recycling facilities in California operated by Industrial Services and Evergreen, test used oil in each in-coming truck before it is unloaded into the tanks. Neither facility has cited backlogs or other negative impacts.

DTSC believes that the conditions of the permit are necessary to ensure that used oil is not mixed with used oil containing a high concentration of PCBs thus rendering the used oil un-recycleable.

[C.] The DTSC Permit Condition Requiring PCB Testing Is Not An Underground Regulation

D/K contends that the permit condition requiring PCB testing is a change in regulatory policy and that the March 15, 2007 memorandum is an underground regulation that must be formally adopted pursuant to the Administrative Procedures Act (APA). D/K is mistaken as to both contentions.

First, the June 15, 2007 memorandum from Deputy Director Watson Gin to Ray Leclerc, Permit Renewal Team Leader provides direction in determining permit conditions for used oil transfer facilities. The memorandum suggests what permit conditions "should" be considered in establishing the appropriate permit conditions at used oil transfer facilities. The attached chart underscores this interpretation in that it lists facilities that the team is not working on that have the PCB testing permit condition, including one that "may" require a modification to add the requirement, and eighteen permits that the team is working on. The memorandum in no way pre-determines or decides how permit conditions will be established for the affected facilities. The memorandum is merely intended to provide direction and consideration of the requirement for the permit renewal team and is not a change in DTSC regulatory policy.

Moreover, the requirement to include PCB testing as a permit condition is, as noted above, intended to ensure that a receiving facility accepts legally authorized used oil. It is well settled that DTSC has the authority to impose permit conditions on each hazardous waste facility specifying the types of hazardous waste that may be accepted for transfer, storage treatment or disposal. (Health & Safety Code, §25200(a).) In addition, DTSC may impose any other conditions on a hazardous waste facilities permit that are consistent with the intent of the Hazardous Waste Control Law (HWCL). (Ibid)

In this case, DTSC is imposing a permit condition that ensures the facility and the receiving facility accepts used oil and not another type of hazardous waste contaminated with PCBs. Such a requirement is consistent with the intent of the HWCL that transfer facilities and receiving facilities accept, transfer and dispose of the type of hazardous waste allowable under the permit. The requirement is a reasonable means of protecting public health and the environment.

The requirement to test for PCBs in the AOC permit is not a rule or standard of general application. It is a requirement to be considered in a specific

case, as suggested by the use of the words “should” in the March, 2007 memorandum.

Finally, AOC was given notice and an opportunity to be heard in establishing the permit condition. AOC had no objection to the requirement so it cannot be deemed as an attempt on DTSC’s part to improperly impose a permit condition without due process of the law. Instead, the PCB testing requirement was considered and determined to be necessary to include as a permit condition for AOC.